IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

DAVID N ATHERTON, Plaintiff, v. BEN GOLDSTEIN and DIANNE GOLDSTEIN and PEACEMAKER PROPERTIES, LLC and PEACEMAKER NATIONAL TRAINING CENTER, LLC Defendants.	Case No. _________________

Plaintiff for its complaint against Defendants aver with knowledge as to its own acts and otherwise on information and belief as follows:

PARTIES

1. Plaintiff David N. Atherton ("Atherton") is a resident of Loudon county Virginia and resides at 20652 St. Louis Rd, Purcellville, VA.

2. Defendants Ben Goldstein and Dianne Goldstein ("the Goldsteins") are husband and wife and reside at 342 Nettle Lane, Winchester, VA.

3. Defendant Peacemaker Properties, LLC ("Peacemaker Properties") is a West Virginia limited liability company with its principal office located at 1624 Brannons Ford Road; Gerrardstown, West Virginia.

4. Defendant Peacemaker National Training Center, LLC ("Peacemaker Training") is a West Virginia limited liability company with its principal office located at 1624 Brannons Ford Road; Gerrardstown, West Virginia.

JURISDICTION AND VENUE

5. This civil action for violation of civil rights and accompanying torts arises under 42 U.S.C. § 1983 and the Virginia common law. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. Venue is proper under 28 U.S.C. § 1391(b). The Goldsteins, Peacemaker Properties, and Peacemaker Training are subject to personal jurisdiction in this district.

FACTS

6. Peacemaker Properties owns an approximately 500 acre parcel of land ("Range Property") upon which Peacemaker Training operates a firearm range (hereinafter Peacemaker Training and Peacemaker Properties are referenced collectively as the "Peacemaker Group"). Approximately 90% of the Range Property is located in Berkeley Co. West Virginia and approximately 10% of the Range Property is located in Frederick Co. Virginia.

7. The Range Property boasts the east coast's largest shooting sports complex with over seventeen fully supervised ranges. With the exception of Camp Perry, operated by the National Rifle Association (NRA), the Peacemaker Group holds more competitions than any other shooting range in the world. Peacemaker matches include: 3Gun, USPSA, IDPA, SASS,

NRA Matches, F-Class, Long Range Challenge Matches, Recreational Matches, Sporting Clays, Shotgun Sports Fun Shoots etc. The Peacemaker Group's activities extend beyond private citizen activities; the Peacemaker Range acts as a training center for law enforcement officers, federal agencies, and select members of the United States Military become more proficient in proper firearms use. The Peacemaker Group possesses a sterling international reputation as a marquee provider of shooting services, instruction, and marksmanship activities/competitions. The Peacemaker Group is owned by Cole McCulluch, a retired U.S. Marine.

8. Users of the services of the Peacemaker Group, and purchasers of goods therefrom, travel substantial distances to patronize the Peacemaker Group. The location of the Peacemaker Group is calculated not to cater to a West Virginia customer base, but rather to capitalize on the inexpensive nature and substantial availability of West Virginia real estate to draw patrons from Maryland, West Virginia, Virginia, and Washington D.C., including federal agencies and personnel which is a substantial source of revenue for the Peacemaker Group.

9. The Goldsteins reside in Virginia in the vicinity of the Range Property.

10. The Commonwealth of Virginia expressly limits nuisance actions against shooting ranges to the standards in existence on the date that the shooting range was established. Va. Code § 15.2-917. Peacemaker Training was established in early 2011 and received final county approvals in May 2011. No noise ordinances applicable to the Range Property existed at that time in Frederick Co. Virginia.

11. With knowledge of Virginia's strict attitudes towards actions against shooting ranges, the Goldsteins and on or about September 18, 2015 filed an action ("Berkeley State Court Action") in the Circuit Court of Berkeley Co. West Virginia for a single cause of action,

nuisance. *See* Exhibit A. The Berkeley State Court Action sets the Goldsteins as plaintiffs against the Peacemaker Training and Peacemaker Properties as defendants.

12. West Virginia is a more plaintiff-friendly climate for the filing of nuisance complaints against shooting ranges. Notwithstanding the friendlier climate, West Virginia nonetheless restricts nuisance actions against shooting ranges to be filed within four years of the range's establishment or two years after a substantial change in the use of the range. W.Va Code 61-6-23.

13. Berkeley Co. West Virginia established a nuisance ordinance that prohibits excessive noises in residential areas, but expressly exempts shooting ranges therefrom. See Exhibit B (http://berkeleywv.org/sharedimg/library/28.pdf).

14. In the Berkeley State Court Action, the defendants on March 4, 2016 filed a motion to dismiss based on the aforementioned West Virginia applicable statute of limitations (W.Va Code 61-6-23), the exceptions present in the Berkeley Co. noise ordinance, and the Virginia shooting range nuisance exception (Va. Code § 15.2-917). The judge refrained from ruling thereon and has refrained from entering a ruling up to the present date.

15. Discovery in the Berkeley State Court Action has been hotly contested and active. The Goldsteins maneuvered their discovery strategy deep into the realm of politics when their counsel issued discovery requests, Exhibit C, seeking all communications and affiliations between the Peacemaker Group and the National Rifle Association. The Peacemaker Group objected to this scope of discovery based on its tenuous relationship to enjoyment of real property, but the Court ratified, Exhibit D, findings by a special discovery commission ("Discovery Commission"), Exhibit E, permitting review of all communications between the NRA and the Peacemaker Group.

16. The Goldsteins' discovery strategy is conspicuously unrelated to their nuisance cause of action. In their discovery requests, the Goldsteins seek:

a. The identities of all construction personnel that worked on the Peacemaker Range, Exhibit C (Int. No. 7).

b. *All identities and weapons used by* ***every*** *shooter, and correlated to the shooter,* at the Peacemaker Range since its establishment as well as the dates and times that the shooters were present, Exhibit C (Int. Nos. 8-9, 23-24). The Discovery Commission cursorily acknowledged the great amount of detail sought by the Interrogatory before it ordered the Peacemaker Group to answer the Interrogatory "fully". Exhibit E.

c. Daily logs of shooters as well as the weapons used by the shooters since 2006, Exhibit C. (Doc. Req. 1).

d. A complete listing of all ammunition used at the Peacemaker Range every day, sorted by day, since 2006. Exhibit C (Doc. Req. 7).

e. All purchases by customers at Peacemaker Range since 2006. Exhibit C. (Doc. Req. 11-12)

f. All sales and use taxes paid by the Peacemaker Group. Exhibit C. (Doc. Req. 13-15)

g. Documents related to any competition since 2006. Exhibit C. (Doc. Req. 27-28)

h. Documents related to the construction of the individual ranges. Exhibit C. (Doc. Req. 29-33)

i. Documents in which the Peacemaker Group communicates with political and shooting groups. (Doc. Req. 33,35)

17. The Discovery Commission approved, and the Court later ratified, the scope of all of the topics of Pars. 15-16 of this Complaint. Furthermore, the Court intimated to the Goldsteins

that the Peacemaker Group's challenge to these discovery requests, which failed *in toto*, justified an award of attorneys' fees. See Exhibit E, par. 17.

18. On Wednesday, March 22, 2017, counsel for the Goldsteins entered the premises of the Peacemaker Group to identify documents and files for production approved by the Berkeley Co. Circuit Court for disclosure. These documents include:

a. All member files;

b. All waivers from any person who has accessed the Peacemaker Range, including all law enforcement, federal agency personnel, military personnel, and foreign military personnel names;

c. All shooting competition files and lists;

d. All training information and lists;

e. All customer waivers;

f. All identities of all persons who have used the Peacemaker Group services;

g. All ATF and NFA records, including Forms 4473 and ATF bound book information.

19. Atherton is a member of the Peacemaker Group, has purchased goods and services from the Peacemaker Group, has brought guests to the Peacemaker Range (including his children), has communicated with the Peacemaker Group and has otherwise interacted with the Peacemaker Group to a substantial degree.

20. Atherton legally owns firearms, practices with firearms, and holds licenses to possess firearms and firearms equipment, including a concealed carry permit, a license for to possess a suppressor, etc.

21. The discovery condoned by the court in the Berkeley State Court Action will reveal information related to Atherton's membership status, firearms use, firearms possessed by

him, training techniques known by him, equipment possessed by him, licensure information, confidential identifying information, and other confidential and sensitive information.

22. The court of the Berkeley State Court Action refused to permit members of the Peacemaker Group to intervene prior, or contemporaneous, to the discovery acquisition of the Goldsteins.

COUNT I: VIOLATION OF CIVIL RIGHTS: THE RIGHT TO BEAR ARMS
42 U.S.C. § 1983, Against all Defendants

23. Plaintiff incorporates all prior paragraphs as if fully restated.

24. The Second Amendment of the United States Constitution guarantees that "the right of the people to keep and bear Arms, shall not be infringed."

25. Unfettered access as granted under by Berkeley Circuit Court under color of law, i.e., pursuant to rules of civil procedure enacted by the State of West Virginia, to the Goldsteins, or any individual or actor, to the membership list and related files; information about weapons, training, equipment, licensure, and background checks; and other confidential information ("Member Information") of members of the Peacemaker Group deprives Atherton of his Second Amendment right to bear arms.

COUNT II: VIOLATION OF CIVIL RIGHTS: FREEDOM OF ASSOCIATION
42 U.S.C. § 1983, Against all Defendants

26. Plaintiff incorporates all prior paragraphs as if fully restated.

27. The First Amendment of the United States Constitution guarantees "the right of the people peaceably to assemble."

28. Unfettered access as granted under by Berkeley Circuit Court under color of law, i.e., pursuant to rules of civil procedure enacted by the State of West Virginia, to the Goldsteins, or any individual or actor, to the membership list and related files; information about weapons,

training, equipment, licensure, and background checks; and other confidential information ("Member Information") of members of the Peacemaker Group deprives Atherton of his First Amendment right to assemble peaceably in a group exercising their Second Amendment rights.

COUNT III: ABUSE OF PROCESS
Against the Goldsteins

29. Plaintiff incorporates all prior paragraphs as if fully restated.

30. The Berkeley Co. State Action by the Goldsteins against the Peacekeeper Group was initiated in a West Virginia court with the ulterior motive, unrelated to their substantive claims, of acquiring political information from the Peacekeeper Group concerning the Peacekeeper Group's relationship with the NRA and other Second Amendment organizations.

31. The Berkeley Co. State Action by the Goldsteins against the Peacekeeper Group was initiated in a West Virginia court with the ulterior motive, unrelated to their substantive claims, of accessing Member Information in order to cause the greatest degree of havoc possible and advance their claims based on the nuisance value of their discovery rather than on any misconduct relative to their barred claims.

32. In pursuing their time-barred and impermissible claims in the Berkeley Co. State Action, the Goldsteins have demanded sensitive Member Information related to Atherton, his children, and his fellow-members.

33. Atherton, like many avid shooters, relies on, and is entitled to, the discretion exercised by shooting range operators to guard the identities of, and weapons and equipment possessed by, shooting range patrons.

COUNT IV: INTERFERENCE WITH CONTRACT
Against the Goldsteins

34. Plaintiff incorporates all prior paragraphs as if fully restated.

35. Atherton as a member of the Peacemaker Group possesses a contract therewith for use of the Peacemaker Range and that the Peacemaker Range would retain Atherton's membership information and other information in confidence.

36. The Goldsteins know of the contract between the Peacemaker Group and its members, and via improper discovery conduct intended to disrupt the performance of Atherton's contract with the Peacemaker Group, and the Goldsteins' conduct prevent the performance of the contract, and/or made the performance more difficult and expensive.

37. Atherton was harmed by the Goldsteins' actions and conduct as described herein.

WHEREFORE, Plaintiff prays for judgment:

A. That all Defendants be found liable for their violations of 42 U.S.C. 1983;

B. That Plaintiff be awarded his damages related to the unlawful actions of the Goldsteins as characterized by this Complaint.

C. That Plaintiff be awarded punitive damages related to the unlawful actions of the Goldsteins as characterized by this Complaint.

D. That Plaintiff be awarded its reasonable attorney's fees and costs in this action.

E. That Plaintiff be granted an injunction preventing any discovery that identifies Atherton, other members of the Peacemaker Group, and his/their activities, weapons, equipment, and other Member Information.

F. That Plaintiff be granted a temporary restraining order preventing any discovery that identifies Atherton, other members of the Peacemaker Group, and his/their activities, weapons, equipment, and other Member Information.

G. That Plaintiff be granted a permanent injunction preventing any discovery that identifies Atherton, other members of the Peacemaker Group, and his/their activities, weapons, equipment, and other Member Information.

H. That Plaintiff be awarded such further relief as this Court may deem just and proper.

DATED: March 23, 2017

By M. Keith Blankenship

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